IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

OP.No. 6090 of 2001(Y)

PETITIONER:

K.J.THOMAS
KOLARAYIL HOUSE
THALAYOLA PARAMBU P.O.
KOTTAYAM

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)

RESPONDENTS:

1. LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY ITS CHAIRMAN
CENTRAL OFFICE, YOGAKHEMA, JEEVAN BIMA MARG
MUMBAI-400 021

2. CHAIRMAN
LIFE INSURANCE CORPORATION OF INDIA
CENTRAL OFFICE, YOGAKHEMA, JEEVAN BIMA MARG
MUMBAI-400 021

3. ZONAL MANAGER
LIFE INSURANCE CORPORATION OF INDIA
SOUTHERN ZONAL OFFICE, L.I.C. BUILDING, ANNASALAI
CHENNAI-600 002.

4. SENIOR DIVISIONAL MANAGER
LIFE INSURANCE CORPORATION OF INDIA
DIVISIONAL OFFICE, NAGAMPADAM
KOTTAYAM 686 001.

BY ADV. SRI.S.EASWARAN,SC LIC.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007 , THE COURT ON 21/11/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the notice dated 24-9-1998 of the 4th respondent.

Ext.P2: True copy of the representation dated 7-10-1998 of the petitioner to the 4th respondent.

Ext.P3: True copy of the letter dated 13-10-1998 of the Shaji Joseph.K. to the 4th respondent.

Ext.P4: True copy of the letter dated 26-10-1998 of the Shaji Joseph.K to the 4th respondent.

Ext.P5: True copy of the letter dated 8-2-1999 of the petitioner to the 4th respondent.

Ext.P6: True copy of the proceeding dated 20-4-1999 of the 4th respondent.

Ext.P7: True copy of the appeal petition dated 29-5-1999 of the petitioner before the 3rd respondent.

Ext.P8: True copy of the order dated 4-12-1999 of the 3rd respondent with covering letter dated 14-12-1999.

Ext.P9: True copy of the memorial dated 30-12-1999 submitted by the petitioner before the 2nd respondent.

Ext.P10: True copy of order dated 10-11-2000 of the 2nd respondent with covering letter dated 14-11-2000.

Ext.P11: True copy of the show cause notice dated 6-12-2000 of the 3rd respondent with covering letter dated 8-12-2000.

Ext.P12: True copy of the representation dated 31.12.2000 of the petitioner to the 3rd respondent.

Ext.P13: True copy of the show cause notice Mktg/D-1KVR dated 1-2-2001 of the 3rd respondent.

Ext.P14: True copy of the representation dated 23-11-2000 of the petitioner to the 4th respondent.

Ext.P15: True copy of the representation dated 16-1-2001 of the petitioner to the 4th respondent.

Ext.P16: Photocopy of the order dated 17-9-2003 in O.P.No.381 of 1999 of the Consumer Disputes Redressal Forum, Kottayam.

Ext.P17: Photocopy of the order dated 14-5-2004 in Appeal No.916 of 2003 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

Ext.P18: True copy of the withdrawal letter dated 13-10-1998 of Sri.Shaji Joseph to the Senior Division Manager, L.I.C. of India, Kottayam.

// True copy //

P.A. to Judge

jes

O.P.No. 6090 of 2001(Y)

ORDER ON C.M.P.NO.10090 OF 2001
IN
O.P.NO.6090 OF 2001

DISMISSED

SD/-
A.K.BASHEER, JUDGE

21.11.2007

A.K.BASHEER, J.

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O.P.No.6090 OF 2001

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Dated this the 21st day of November 2007

JUDGMENT

Having heard learned senior counsel for the petitioner and the learned Standing Counsel for the respondents, I am of the view that this original petition can be disposed of without going into the factual aspects of the issue at length. However, it may be necessary to refer to certain essential facts before an appropriate direction can be issued to the authority concerned, to deal with the matter afresh.

2. The short question that arises for consideration in this original petition is whether the termination of agency of the petitioner under the Life Insurance Corporation of India (Agents) Rules, 1972 (for short the Rules) is legally valid and sustainable.

3. Petitioner who had been, admittedly, working as an agent in the Corporation was served with Ext.P1 notice directing him to show cause why his agency was not be terminated as provided under the Rules 16(1) (a) and (b) with forfeiture of Commission under Rule 19(1) the Rules. The charge against the petitioner as

indicated in Ext.P1 appeared to be that he had failed to remit quarterly premium at the rate of Rs.1,954 in respect of a policy held by Sri.Shaji Joseph.K, though the insured had allegedly handed over the same in cash to the petitioner from time to time. According to the Corporation, the petitioner had committed default in remittance of 21 such instalments. Ultimately, the petitioner had, allegedly, presented a cheque in favour of the Corporation for a sum of Rs.29,041.50/- on October 23, 1996 being the premium amount, for the purpose of revival of the policy mentioned above. According to the Corporation the account, from which the said cheque was issued in favour of the Corporation, was held by one of the relatives of the petitioner. It was also alleged that petitioner had paid a sum of Rs.20,200/- in cash in November 2006 to the policy holder as revival benefits. In short, Ext.P1 show cause notice indicated that the agency of the petitioner was liable to be terminated for violation of the relevant clauses in the Rules.

4. Though petitioner had submitted Ext.P2 reply to the show cause notice, the Corporation did not find it satisfactory.

Thereafter, by proceedings dated, April 20, 1999 the Senior Divisional Manager of the Corporation imposed the penalty of termination of petitioner's agency in terms of rule 16 (1) (a) and 16 (1) (b) without forfeiture of Commission under Rule 19(1) of the Rules. A copy of the above proceedings is on record as Ext.P6.

5. Petitioner had preferred Ext.P7 appeal against the above order of penalty. The Appellate Authority while dismissing the appeal proceeded to hold that the punishment imposed on the petitioner was inadequate. Therefore, the order of the disciplinary authority was modified and in addition to termination of agency, a further penalty of forfeiture of Renewal Commission under Rule 19(1) of the Rules was also imposed. A true copy of the order of the appellate authority is on record as Ext.P8.

6. Petitioner had challenged the above order in a Memorial presented before the Chairman of the Corporation, who in Ext.P10 proceedings concurred with the finding of the disciplinary as well as appellate authority to the extent of termination of agency of the petitioner. However, the Chairman

took the view that the appellate authority was not justified in ordering forfeiture of the Renewal Commission without hearing the delinquent. Therefore, the case was remitted back to the Appellate Authority with a direction to reconsider the matter and take such further action which he deemed fit.

7. Subsequently, the appellate authority had issued Ext.P11 show cause notice directing the petitioner to explain why the Renewal Commission shall not be forfeited as provided under Rule 19(1) of the Rules. In response to Ext.P11, show cause notice, petitioner had preferred Ext.P12 reply challenging the authority and jurisdiction of the appellate authority to invoke the power under Rule 19. In response to this contention raised by the petitioner, the Corporation had sent Ext.P13 reply to the petitioner justifying the proposed action. It is also the admitted position that petitioner had preferred Ext.P14 reply to the said communication sent by the Corporation.

8. It was at that stage that petitioner had filed this original petition praying inter alia for issue of a writ of certiorari to quash Exts.P6, P8, P10 and P13 and also to issue a writ of mandamus or

such other appropriate writ, order or direction to the respondents to restore the agency of the petitioner to him.

9. It is contended by the learned Senior Counsel that the order of punishment imposed on the petitioner is ex facie illegal and vitiated in as much as the petitioner had not been afforded an effective and adequate opportunity to be heard. It is pointed out by the learned Senior Counsel that in response to the first show cause notice issued by the Corporation, petitioner had specifically pleaded that an enquiry be held in the matter so that petitioner could establish his innocence. The specific case of the petitioner, according to the learned Senior Counsel, was that the insured had never entrusted cash towards 21 instalments of quarterly premium to him as alleged. It is also pointed out that the insured had himself withdrawn the complaint which was submitted before the Corporation, even before the order of termination was issued by the disciplinary authority.

10. Per contra, it is contended by learned Standing Counsel for the Corporation that the materials available before the Corporation were totally convincing to show that petitioner had

violated the provisions contained in the Rules. The policy in question was issued to the insured in July 1991. But the insured had not remitted the quarterly premium for nearly five years till October 1996. A cheque dated October 23, 1996 was received by the Corporation towards the entire premium payable in respect of the above policy. On verification, it was found that the account from which the cheque was issued belonged to a near relative of the petitioner. On further verification, it was also revealed that petitioner had paid a sum of Rs.20,200/- to the insured. It was further revealed that two other cheques were paid by the petitioner from the same bank account in respect of two other policy holders.

11. It is contended by the learned Standing Counsel that disciplinary authority had kept in view all the above relevant aspects while issuing Ext.P6 order. But it is conceded that the appellate authority might not have been justified in invoking the power under Rule 19 without hearing the petitioner. Learned Standing Counsel submits that the above mistake was rectified by the Chairman. The Appellate Authority was directed to

reconsider the matter. He further submits that the petitioner was not justified in approaching this court at a stage when the Appellate Authority was about to consider his appeal in the light of the directions issued by the Chairman. According to the learned Standing Counsel, all the contentions that are available to the petitioner can be raised by him before the Appellate Authority and, if any, adverse orders are passed against him he can approach the Chairman through a memorial. Thus, it is contended by the learned Standing Counsel that the original petition is totally misconceived and therefore it is liable to be dismissed.

12. But in my view, there is some force in the contention raised by the petitioner that the refusal of the Corporation to consider his request for holding an enquiry before proceeding to impose punishment on him was totally unjust. It is pertinent to note that the petitioner had specifically requested for holding an enquiry in Ext.P2 reply. He had specifically contended that he had not received the quarterly premium from the insured as alleged. But according to the Corporation, it had received a

cheque towards the entire premium payable in respect of the policy in October 1996. Surprisingly the Corporation had kept quiet for inexplicable reasons. The case of the Corporation is that the account from which the said cheque was issued was held by a close relative of the petitioner. The further case of the Corporation is that it had received a complaint from the insured in June 1998. It was pursuant to the said complaint that the Corporation had issued Ext.P1 show cause notice in September 1998. But there is nothing on record to show that the petitioner had presented the cheque in question before the Corporation. The contention of the Corporation is that the policy holder/insured had mentioned in his complaint that the cheque had been presented by the petitioners before the Corporation. It is also significant to note that the policy holder had withdrawn the complaint as could be seen from Exts.P3 and P4.

13. Though the Corporation might have been prima facie, satisfied that the petitioner was guilty of misappropriation of the premium amount, till in my view, petitioner could have been given an opportunity to defend himself. As rightly pointed out by the

learned senior counsel, Rule 16 postulates that the agent shall be afforded reasonable opportunity before any action is taken against him under the Rules. The dispute raised by the petitioner undoubtedly would fall in the realm of questions of fact. Therefore, he would have got an opportunity to adduce evidence before the enquiry officer, if an enquiry had been ordered by the Corporation.

14. I do not propose to deal with the other contentions raised by the parties, in view of the order that I propose to pass. Having regard to the entire facts and circumstances, I am satisfied that this is a fit case in which the petitioner has to be afforded an opportunity to adduce evidence in support of his case which means that the Corporation has to be directed to hold an enquiry as requested by the petitioner at the initial stages itself.

15. In this context, it may be profitable to refer to the decision of their Lordships of the Supreme Court in **Transmission Corporation of A.P. Limited V. Sri.Ramakrishna Rice Mill [2006 (3) SCC 74]**. In the above decision, their Lordships held that the parameters of principles of

natural justice cannot be covered by any straitjacket formula. It would vary, depending upon the circumstances involved. What would be a reasonable opportunity would also depend upon the fact situation of a given case. Their Lordships want to hold, while referring to a decision of a constitution bench in **Khem Chand V. Union of India [AIR 1958 SC 300]** that resonable opportunity means an opportunity to deny guilt and establish innocence and also an opportunity to defend one by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.

16. Therefore, Exts.P6, P8, P10 and P13 are quashed. The corporation shall issue appropriate orders instituting an enquiry in the matter. The corporation shall ensure that petitioner is afforded reasonably sufficient opportunity to adduce evidence, if any, in support of his plea. The Corporation can examine its witnesses also.

It will be open to the Corporation to designate respondent no.4 as the enquiry officer for this purpose to which course of action learned senior counsel agrees. It is further submitted by

the learned senior counsel that petitioner will not raise any objection at a later stage about the propriety and legality of appointing respondent no.4 as the enquiry officer in this case. The disciplinary authority shall ensure that the enquiry is completed, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. It is made clear that this case shall not be treated as a precedent in similar proceedings involving the corporation, since the above course of action has been adopted by this court in the peculiar facts and circumstances of this case.

(A.K.BASHEER, JUDGE)

jes

A.K.BASHEER, J.

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O.P.No.6090 OF 2001
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JUDGMENT

Dated, 21st Nov. 2007